

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:W:DEN:TL-N-6136-97  
MSHeroux

date: 6 AUG 1999  
to: Assistant Chief Counsel (Field Service)  
from: District Counsel, Denver

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subject: [REDACTED] - Attorney-Client Privilege

Attached is a memorandum which gives advice to the Examination Team Chief of the above-referenced nondocketed CEP case. Pursuant to CCDM (35)3(19)4(4), we submit this advice for post-review. In accordance with Notice N(35)000-158:

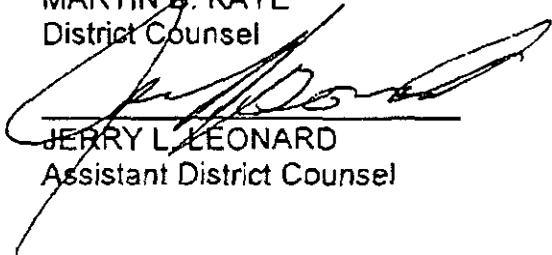
1. The taxpayer's full name: [REDACTED]
2. The taxpayer's latest mailing address: [REDACTED]
3. The taxpayer's taxpayer identification number (TIN): [REDACTED]
4. If a taxpayer has a representative who has a power of attorney to represent the taxpayer in the matter that is the subject of the request, the name and address of the representative:

[REDACTED]

5. Information subject to nondisclosure: We do not believe that there is any information in the file warranting special protection from disclosure.

If you have any questions regarding this memorandum, please contact Mark S. Heroux at (303) 844-2214 ext. 225.

MARTIN B. KAYE  
District Counsel

By: 

JERRY L. LEONARD  
Assistant District Counsel

Enc.: Memorandum to Examination Case Manager With Attachments

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**Internal Revenue Service  
memorandum**

CC:W:DEN:TL-N-6136-97  
MSHeroux

date: 03 AUG 1998

to: Joyce E. Schulte, Case Manager E:2:08

from: District Counsel, Rocky Mountain District CC:WR:RMD:DEN

subject:

Attorney-Client Privilege and the Tax Shelter Exception

Attached is a memorandum on the attorney-client privilege which I prepared in 1992 for distribution to Government of Guam counsel, and agents for the Government of Guam Department of Revenue and Taxation. The attorney-client privilege does not have, and has never had, an exception for communications in connection with the promotion or participation in a tax shelter.

New I.R.C. § 7525, effective for communications made after July 22, 1998, is titled, "Confidentiality privileges relating to taxpayer communications." Section 7525(a), "Uniform application to taxpayer communications with federally authorized practitioners," states in § 7525(a)(1) that,

With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

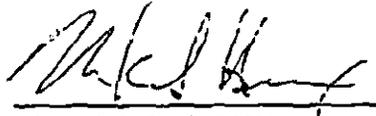
Section 7525(b) states that the § 7525 privilege shall not apply to any written communication between a federally authorized tax practitioner and a representative of a corporation in connection with the promotion or participation in a tax shelter as defined in § 6662(d)(2)(C)(iii).

An issue to be litigated in the future is whether the statutory exception to the § 7525 federally authorized practitioner privilege equally applies to the common law attorney-client privilege. That issue is not present in the [REDACTED] case as the communications at

**Tax Shelter Exception to the Attorney-Client Privilege**

issue were made prior to July 22, 1998. I will review the taxpayer's claims of privilege and render an opinion regarding summons enforcement in the near future.

If you have any questions regarding this memorandum, please contact me at 303.844.2214 ext. 225.

  
MARK S. HEROUX  
Attorney

cc: Assistant Chief Counsel, Domestic Field Service  
Assistant Western Regional Counsel, TL